IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.297 OF 2006

Mr.Pioneer Fasteners .. Petitioners
Versus
Mr.Ashish Anant Apte .. Respondent

Mr.A.Y.Sakhare, Senior Advocate with Mr.J.S.Kini for petitioners
Ms.Jahagirdar i/b. P.S.Dani for respondent

CORAM : S.C.DHARMADHIKARI, J.
DATE : 22nd February 2006.

P.C.

. Heard Mr.Kini for petitioner and Mr.Dani for respondent.

2. It is not necessary to entertain this petition which is directed against an order passed by the appellate bench of Court of Small Causes Mumbai on 20th January 2006 setting aside the order of the trial Judge dated 22nd December 2005.

3. Admittedly L.E.Suit No.51/69 of 2005 is pending. Further it is not disputed by both the sides that an application for injunction made therein is also pending. The matter was carried to the appellate court at an ad-interim stage.

4. In my view, after perusing the order of the trial court as well as of the lower appellate court, it was not necessary for the lower appellate court to have decided the entire issue when the matter is at ad-interim stage. The trial Judge had granted injunction against respondent restraining him from alienating, encumbering, parting with possession of or creating third party rights in the suit premises till the main application for injunction preferred by the landlord owner is heard. This injunction order should not have been vacated. In my view, this order can continue till the injuncion application is heard.

5. Needless to state that this order shall continue without prejudice to the rights and contentions of both sides and it would be open for the petitioner to urge that the respondent cannot carry on any business from the commercial premises except with prior permission of municipal corporation. The trial Judge to endeavour and dispose of the injunction application within four weeks from the date of receipt of copy of this order. All contentions of both sides in that application are kept open. The trial Judge shall not be influenced by the observations made by the appellate bench while deciding the said application and the same shall be decided on its own merits and in accordance with law.

(S.C.DHARMADHIKARI, J)